bsb

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4469 OF 1997

Farhana Banu Mohamed Ayub ... Petitioner

V/s

1. Jadeed Anjuman-E-Taleem

2. The Chairman, School Committee,
   Jat Girls High School
   Higher Secondary, Malegaon,
   Dist. Nasik.

3. The Head Mistress,
   Jat Girls Higher Secondary
   School, Malegaon, Dist. Nasik.

4. The State of Maharashtra
   through Education Officer,
   S.P. Nasik. ... Respondents

ALONGWITH

WRIT PETITION NO. 4470 OF 1997

Smt. Mansoori Shazia Naeem Akhtar ... Petitioner

V/s

1. Jadeed Anjuman-E-Taleem

2. The Chairman, School Committee,
   Jat Girls High School
   Higher Secondary, Malegaon,
   Dist. Nasik.

3. The Head Mistress,
   Jat Girls Higher Secondary
   School, Malegaon, Dist. Nasik.

4. The State of Maharashtra

through Education Officer,
S.P. Nasik. ... Respondents

Mr. A.R.Shaikh for the petitioners in both petitions.

Mr. Anilkumar Patil for respondent Nos. 1 to 3 in both petitions.

CORAM: SMT. NISHITA MHATRE, J.

DATED: RESERVED ON 21.9.2007

PRONOUNCED ON 18.10.2007

ORAL JUDGMENT:

1. The petitioners in both these petitions have challenged the common order dated 17.7.1997 passed by the School Tribunal in Nasik Appeal Nos. 13 of 1997 and 14 of 1997. Both the petitioners were appointed as primary teachers in clear permanent vacancies. They were appointed on 1.8.1995. They were informed that their appointment was on probation for two years. The appointment order issued to each of the petitioners indicates that the appointment was not on a temporary basis but on a probation for a period of two years from 1.8.1995. An order terminating the services of both the petitioners was issued on 30.3.1997 which was to take effect on 30.4.1997.

2. Appeals were preferred by each of the petitioners before the School Tribunal. The Tribunal stayed the

orders of termination pending the appeals. Respondent Nos. 1 to 3 pleaded in their written statement that the approval was granted by the Education Department to the appointments of the petitioners only upto 30.4.1997 and that, therefore, their services had to be terminated on that day. According to the respondent Nos. 1 to 3, they had inadvertently stated in the appointment letter that the appointment of the petitioners was on probation, although approval had not been granted by the Education Department. It was also pleaded that the strength of the students in the junior college was reduced. Respondents 1 to 3 further contended that the appointment orders issued to the petitioners were in violation of the procedure laid down under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (in short "M.E.P.S. Act") and Rules framed thereunder.

3. Contrary to the stand taken by the respondent Nos. 1 to 3, respondent No.4 i.e. the Education Officer filed his written statement contending that respondent Nos. 1 to 3 had not observed the Rules 26 and 27 of the M.E.P.S. Rules. Thus, the Education Officer supported the stand of the petitioners.

4. The School Tribunal however dismissed the appeals

preferred by both the petitioners. It came to the conclusion that the nomenclature used to describe the status of the petitioners in their appointment letters would not conclusively prove that the appointment was even on a clear permanent vacancy. The Tribunal concluded that since the approval was granted to the appointment of the petitioners only upto 30.4.1997. the services were terminated correctly by respondent Nos. 1 to 3. The Tribunal then held that the appointments of the petitioners were in fact on a temporary basis for a period of two years and, therefore, they were not entitled to reinstatement after their services were terminated.

5. With the assistance of the learned advocates appearing for both the petitioners and the respondents, I have perused the record before me and I find that the School Tribunal has passed an erroneous order which requires to be set aside. Rule 9(5) of the M.E.P.S. Rules stipulates that, an appointment letter must be in the form annexed as Schedule "D" to the Rules. In the present case, respondents 1 to 3 had chosen to retain the clause in the proforma of the appointment order which specifies that the appointment was on probation under Section 5(2). The appointment order issued to each of the petitioners clearly stipulates that their

appointment was on probation for a period of two years from 1.8.1995. Thus, it must be held that the appointments were made on a probationary basis for two years. A probationer is entitled to continue in service in a permanent vacancy for a period of two years and on completion of this period of two years he is deemed to have been confirmed in service under the provisions of Section 5(2) of the M.E.P.S. Act. Admittedly, the services of the petitioners were terminated on 30.3.1997, even prior to the probation period coming to an end. However, such a termination could be effected by the respondent Nos. 1 to 3 during the period of probation only when the work or behaviour of the probationer was not satisfactory. While terminating the services of a probationer on these grounds, it is incumbent on the management to give him one month's notice or to pay him salary in lieu of notice. Admittedly, there is no material on record indicating that the services of the petitioners have been terminated due to unsatisfactory work or unsatisfactory behaviour. Nor is there any evidence of a notice or salary in lieu of notice being given to the petitioners. Section 5(2) of the M.E.P.S. Act stipulates that, any appointment made in a clear vacancy shall be made for a period of two years. The Education Officer in the present case has, in his written statement filed before

the Tribunal, contended that the appointment was against a clear permanent vacancy and the petitioners ought to have been continued by the respondents 1 to 3 as deemed permanent employees under Section 5(2). Thus, the termination of services effected by respondent Nos. 1 to 3 is illegal and contrary to law.

6. It is the case of the respondent Nos. 1 to 3 that there was a reduction in the strength of the students and reduction in the work-load available for the teachers and it was, therefore, necessary to reduce the staff strength. Rule 26 deals with retrenchment on account of abolition of posts. Under Rule 26, a detailed procedure is to be followed while retrenching a teacher. Assuming that the case of the respondent Nos. 1 to 3 is to be accepted that there was reduction in the strength of the students and therefore they were compelled to terminate the services of the petitioners, they could do so only after declaring the petitioners surplus as they would be deemed to be permanent.

7. Admittedly, the provisions of Rule 26 have not been complied. Respondent Nos.1 to 3 have terminated the services of the petitioners only because approval was not accorded by the Education Officer to their appointments after 30.4.1997. In view of the Full Bench

judgment in the case of **St.Ulai High School & anr. v/s Devendraprasad Jagannath Singh & anr., reported in 2007 (2) ALL MR 1,** the continuation of an employee in employment is not dependant on the approval being granted for her appointment. As held by the Full Bench, the grant of approval is for the purposes of securing grant-in-aid from the Government. It has no relevance to the tenure of appointment of any employee nor is the employment dependant on the approval being granted by the Education officer. Therefore, looked at from any angle, the order of the School Tribunal impugned in both these petitions is incorrect and is, therefore, required to be set aside.

8. Affidavits have been filed by respondent Nos. 1 to 3 indicating that some teachers have been appointed by them during the pendency of the petition and today there are no vacancies. In my view, this cannot be the reason for denying reliefs to the petitioners.

9. The impugned order in Nasik Appeal Nos.13 of 1997 and 14 of 1997 is set aside.

10. Both writ petitions are allowed. Rule made absolute with costs.

11. The learned advocate for the respondents seeks a stay of this order. Stay refused.

.....